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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE A. LAGUER,

Defendant and Appellant.

B192568

(Los Angeles County
Super. Ct. No. MA034249)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Carol Koppel, Judge. Affirmed in part and remanded for resentencing.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Respondent.

George A. Laguer appeals from a judgment entered following his no contest plea to first degree robbery (Pen. Code, § 211), his admission that he personally used a firearm within the meaning of Penal Code section 12022.53, subdivision (b) and that the crime was committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members within the meaning of Penal Code section 186.22, subdivision (b)(1)(B).¹

Appellant was advised pursuant to Penal Code section 1192.5 that if for some reason the sentencing judge did not want to accept the plea agreement, appellant would be entitled to have his plea and admissions set aside. With that in mind, appellant agreed that another judge could handle his sentencing.²

¹

A felony complaint charged appellant and a codefendant with four counts of second degree robbery (Pen. Code, § 211), that appellant personally used a firearm within the meaning of Penal Code section 12022.53, subdivision (b), and that pursuant to Penal Code section 186.22, subdivision (b)(1)(B), the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members. As part of the plea negotiations, count 3 was amended from a second degree robbery to a first degree robbery and the victim's name was changed to Jesus F. Granados. It was represented that the remaining charges as well as charges in a new case, MA034581, and other potential robberies that could be filed from January 10, 2006, would not be pursued as part of this disposition. Appellant's counsel stipulated to a factual basis for the plea. As part of his plea, appellant also waived his right to a preliminary hearing.

The probation report reflects on January 10, 2006, appellant and two codefendants committed several armed robberies in the Antelope Valley. With reference to count 3 it states that at 7:00 p.m., victim Jesus Granados was walking to his vehicle after using an ATM at a Washington Mutual Bank in Palmdale, when a vehicle pulled up next to him and appellant pointed a large caliber, semiautomatic handgun at him and robbed him.

²

See *People v. Arbuckle* (1978) 22 Cal.3d 749.

On March 30, 2006, appellant made an oral motion to withdraw his plea. The trial court appointed an attorney to represent appellant regarding this motion and the matter was continued.

On April 28, 2006, appellant's newly appointed counsel represented to the court that there was no basis upon which to withdraw the plea. The trial court stated it had reviewed the transcript as well and understood why counsel was of that opinion. Appellant was then sentenced pursuant to the negotiated plea to prison for 21 years.

Appellant requested but was denied a certificate of probable cause.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On November 21, 2006, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response was received.

Upon our review of the record, we observed that the court stated it was sentencing appellant to the "mid term, which was the agreement, three years doubled to six by virtue of the strike and the admission of the use of the firearm, 10 years is added, and the gang enhancement's five years, for a total of 21 years in state prison." The record reflects, however, that appellant did not admit a prior strike conviction. Additionally, the punishment for first degree robbery, pursuant to Penal Code section 213, subdivision (a)(1)(B) is state prison for three, four or six years.

On March 8, 2007, we requested appellate counsel and the Office of the Attorney General to respond to this sentencing issue, which they did.

Appellate counsel acknowledges that appellant agreed to a term of 21 years but states we cannot speculate how that figure was reached. Respondent concedes

appellant did not admit a prior strike conviction but asserts nonetheless the sentence of 21 years is correct because the high term for first degree robbery is six years, plus 10 years for the firearm use and five years for the gang enhancement.³

We agree with appellant that we cannot speculate how the agreed to term of 21 years was reached and we must, therefore, remand the matter to the trial court for resentencing.⁴

DISPOSITION

The matter is remanded for resentencing and in all other respects the judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.

³ We also note that the punishment for a criminal street gang enhancement when the felony is a robbery is 10 years. (See Pen. Code, § 186.22, subd. (b)(1)(C).)

⁴ We have examined the entire record and are satisfied that no other arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)